

Message

Sent: 6/25/2019 2:29:55 PM
To: Miranda Green [mgreen@thehill.com]
Subject: Clarifying comment/headline

Miranda the premise of the your entire article is incorrect, and I would recommend retracting this. Your false description of a “no records” response as a denial of a FOIA request leads to inaccuracies throughout the whole piece. A “no records” response is inherently a “granting” of a FOIA request, in which a search was conducted and no records were discovered.

Your headline is inaccurate in how it describes the new regulation. EPA is not “expanding” political appointees powers to turn down FOIA requests. What we have done with this new rule is restated in a single place that political and career agency officials who are authorized to issue determinations under the FOIA statute. The 2002 regulation was ambiguous in its description of who held this authority previously.

The following statements are false:

Political appointees at the Environmental Protection Agency (EPA) will soon have the authority to reject public information requests without explanation.

The EPA’s new Freedom of Information Act (FOIA) rule will expand the ability of the agency’s administrator and other administration officials to withhold sought-after documents by labeling them “non-responsive,” according to a copy of the final rule obtained by The Hill.

According to the new language in the FOIA rule signed by EPA chief Andrew Wheeler last week, the administrator and other officials would be allowed to review all materials that fit a FOIA request criteria, known as responsive documents, and then decide “whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue ‘no records’ responses.”

A “no records” response would allow records seekers to be told there are no documents meeting their search criteria, even if they were found but withheld by the political appointees.

The blanket explanation for non-responsive materials may also make it harder for groups or individuals to legally challenge any of EPA’s decisions to withhold documents, because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld under a “no records” response.

Message

Sent: 6/25/2019 3:18:16 PM
To: Epp, Timothy [Epp.Timothy@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: FW: requesting a retraction

Ex. 5 Deliberative Process (DP)

Miranda, I would continue to reiterate my call to retract

"The entire premise of your article is false the new regulation does not grant any additional authorities to "reject" FOIA requests by claiming "no records." A response that yields "no records" is simply a request in which a search has been conducted and no responsive records are found, it is a frequent determination that has existed since the passage of the FOIA. This new regulation brings EPA into compliance with the law, which the Obama administration ignored." – **Michael Abboud EPA spokesman**

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 11:14 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: requesting a retraction

Can you provide a statement to us, reiterating what you said on the phone-- specifically saying that you don't intend to use "no response" authority in the way I described?

On Tue, Jun 25, 2019 at 11:03 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Thank you please give me an update as soon as possible.

Sent from my iPhone

On Jun 25, 2019, at 11:00 AM, Miranda Green <mgreen@thehill.com> wrote:

I got this Michael, I will be talking with my editor shortly and will get back to you.

On Tue, Jun 25, 2019 at 10:42 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda, please also flag for your editor, the premise of the your entire article is incorrect, and I would recommend retracting it. Your false description of a "no records" response as a denial of a FOIA request leads to inaccuracies throughout the whole piece. A "no records" response is inherently a "granting" of a FOIA request, in which a search was conducted and no records were discovered.

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The following statements are false, as you can tell from the extensive inaccuracies it would be better to retract and start over.

Political appointees at the Environmental Protection Agency (EPA) will soon have the authority to reject public information requests without explanation.

The EPA's new Freedom of Information Act (FOIA) rule will expand the ability of the agency's administrator and other administration officials to withhold sought-after documents by labeling them "non-responsive," according to a copy of the final rule obtained by The Hill.

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EPA officials who would be authorized to make that decision include the administrator, deputy administrators, assistant administrators, deputy assistant administrators, regional administrators, deputy regional administrators, general counsel, deputy general counsels, regional counsels, deputy regional counsels and the inspector general or delegates of those individuals, according to the final rule.

A "no records" response would allow records seekers to be told there are no documents meeting their search criteria, even if they were found but withheld by the political appointees.

The blanket explanation for non-responsive materials may also make it harder for groups or individuals to legally challenge any of EPA's decisions to withhold documents, because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld under a "no records" response.

Bell equated EPA's new FOIA rule to a similar regulatory action unveiled earlier this year at the Interior Department, called an "awareness review," which allows political appointees 72 hours to review documents that mention them by name prior to release.

While the EPA administrator and other political appointees have had the ability to grant or deny FOIA requests, doing so under the "basis of responsiveness" and "no response" option is a new addition in the forthcoming rule.

Bell warned that the new order could allow EPA political appointees to better control the documents ultimately released by regional offices. He said regional offices often have less political pressure to withhold more responsive materials.

"This is just making sure that every FOIA request that gets reviewed gets taken down the hall or next door to Andrew Wheeler's office," Bell said. "Basically, anytime a FOIA request goes up to the administration you can extend however long it will take and reduce what you get back."

--

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--

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[@mirandacgreen](https://twitter.com/mirandacgreen)

Message

Sent: 6/25/2019 3:16:24 PM
To: Miranda Green [mgreen@thehill.com]
Subject: RE: requesting a retraction

You can use anything below on the record. Specifically

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 11:14 AM
To: Abboud, Michael <abboud.michael@epa.gov>
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“Basically, anytime a FOIA request goes up to the administration you can extend however long it will take and reduce what you get back.”

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--

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Message

Sent: 6/26/2019 2:46:36 PM
To: trobberson@post-dispatch.com; kmcdermott@post-dispatch.com
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Konkus, John [konkus.john@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]
Subject: Asking for a correction to your recent EPA editorial

Tod and Kevin,

Want to request you correct or retract your recent editorial as it is based off bad information, which has since been corrected by The Hill. The Hill's new headline and correction are below as well as the link to their corrected article. Highly recommend you read the new story of which much was changed and considering editing or taking down your editorial to avoid the further spread of false information. Call me back if you have questions, Ex. 6 Personal Privacy (PP) Also here is the link to the new rule, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-13290.pdf>

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

CORRECTION:

CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.

OLD HEADLINE:

New EPA rule would expand Trump officials' powers to reject FOIA requests

BY MIRANDA GREEN · 06/25/19 09:50 AM EDT

 156 COMMENTS

NEW HEADLINE:

New EPA rule could expand number of Trump officials weighing in on FOIA requests

BY MIRANDA GREEN · 06/25/19 09:50 AM EDT

 191 COMMENTS

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Ex. 6 Personal Privacy (PP)

Message

Sent: 6/26/2019 1:27:55 PM
To: Wallace, Gregory [gregory.wallace@turner.com]; Kaufman, Ellie [Ellie.Kaufman@turner.com]
CC: Konkus, John [konkus.john@epa.gov]
Subject: FW: CNN: EPA changes transparency rules

A couple issues with your article below.

First the Administrator and all staff at the Agency have always been able to review their documents before they are released, this is not new to this administration and not new in this rule. The awareness review process allows all EPA staffers to review their responsive records before they are released and this is in line with the previous administration's practices as well. Career staffers are still the ones handling the FOIA and compiling the responsive records.

I'm asking you to change the green highlighted sentence as it is a misleading characterization of what actually happened last year. Nowhere in the [article you linked to](#) does it say anything remotely close to that. If you want to say that Congressional Democrats accuse the Agency of "slow-walking" that is fine, but Jackson never said anything of the sort.

From: Kazempoor, Kelly
Sent: Wednesday, June 26, 2019 9:17 AM
To: AO OPA Individual News Clips <AO_OPA_Ind_News_Clips@epa.gov>
Subject: CNN: EPA changes transparency rules

CNN

EPA changes transparency rules

<https://www.cnn.com/2019/06/26/politics/epa-foia-rule/>

By Gregory Wallace and Ellie Kaufman

The Environmental Protection Agency is making changes to its transparency rules that include explicitly granting the administrator the authority to decide which public records the agency will release or withhold.

The change in the Freedom of Information Act rule comes without the normal process of public input. It was not announced but instead was placed in the Federal Register for formal publication.

The rule change appears to allow, for example, the administrator to personally review his own documents, such as emails and calendars, and decide what to release and what to withhold, though he still must comply with the applicable laws governing the release of public documents. At federal agencies, that process is typically in the hands of career employees and attorneys.

The EPA says it has fielded an unprecedented level of requests under the Trump administration, and some of its disclosures under FOIA have resulted in embarrassing revelations about agency leadership and actions.

Political appointees at the Trump administration EPA have taken a keen interest in the handling of FOIA requests, even acknowledging instances where the process was tinged with political influence. Chief of staff Ryan Jackson testified last summer that he and aides would slow-walk "politically charged" requests, according to congressional Democrats.

The rule change adds the administrator to the enumerated list of political appointees who can personally review requests and make "final determinations," the decisions about which records fall within the scope of the request and how to redact those documents.

Administrator Andrew Wheeler came into office last summer placing a "premium on transparency," his spokesman said. His predecessor Scott Pruitt had kept "secret" calendars concealing his controversial meetings from public documents, a whistleblower revealed.

The rule change also centralizes the records process, blocking the EPA's network of regional offices from accepting FOIA requests, as is currently done. Those requests will not be considered "received by the Agency," the rule states.

The rule was also posted without a period for public comment, a normal procedure in the creation of federal regulations. The EPA said it was justified in doing so because the revisions "do not change the substantive standards" it uses and it cited a federal law that exempts changes to internal agency procedures from public comment periods.

The agency said in a statement that the changes "will bring the Agency into compliance with the Congressional amendments" to the original Freedom of Information Act law. "Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline," the statement said.

American Oversight, a left-leaning watchdog group that has repeatedly taken the Trump administration to court over slow responses to public records requests, said in a statement, "Giving appointees a political veto over transparency is a recipe for obstruction and deceit."

"Nothing the EPA has done under this administration suggests its top leadership should be trusted to serve as intermediaries of the truth," executive director Austin Evers said in the statement. "Public records belong to the public, not the government, and one of the strengths of the Freedom of Information Act is that it lets nonpartisan experts release information based on the law, not politics."

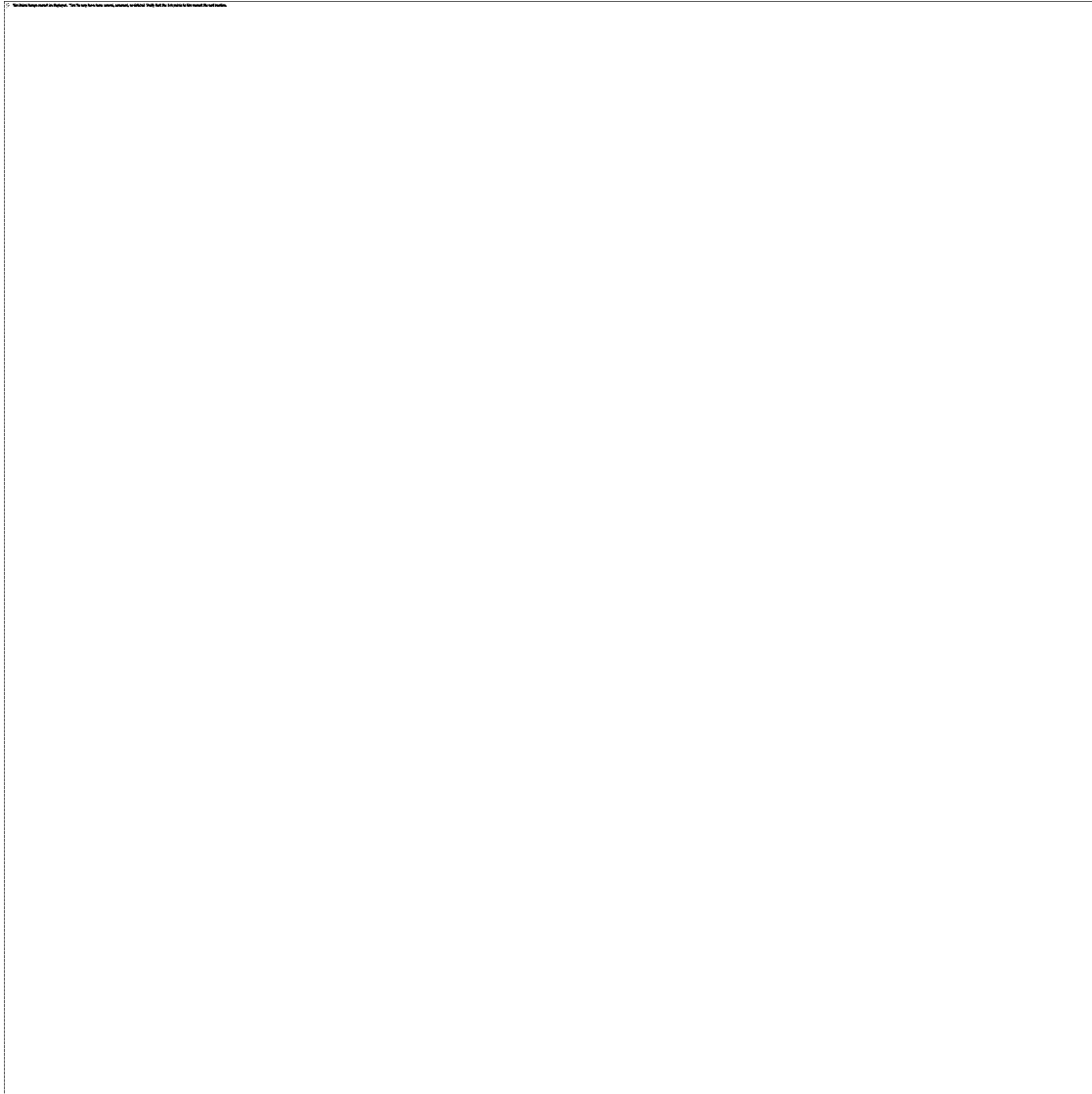
The Sierra Club, which obtained tens of thousands of pages of internal EPA records through the Freedom of Information Act, said the revelations "may never have come to light with this change."

"The only good news about this rule is that it is obviously and in-your-face illegal, and we will fight it tooth and nail," said Pat Gallagher, of the group's environmental law program.

The Interior Department has also expanded political reviews of FOIA requests, including silently establishing an additional layer of review by political appointees and proposing limits on the number of requests a person or group can make. The Interior Department disputes that it has a secret review process and says its proposed changes are in the name of efficiency.

Message

From: EPA Press Office [press@epa.gov]
Sent: 6/25/2019 5:51:16 PM
To: Abboud, Michael
[abboud.michael@epa.gov]
Subject: The Hill Falsely Reports On EPA's New FOIA
Regulation

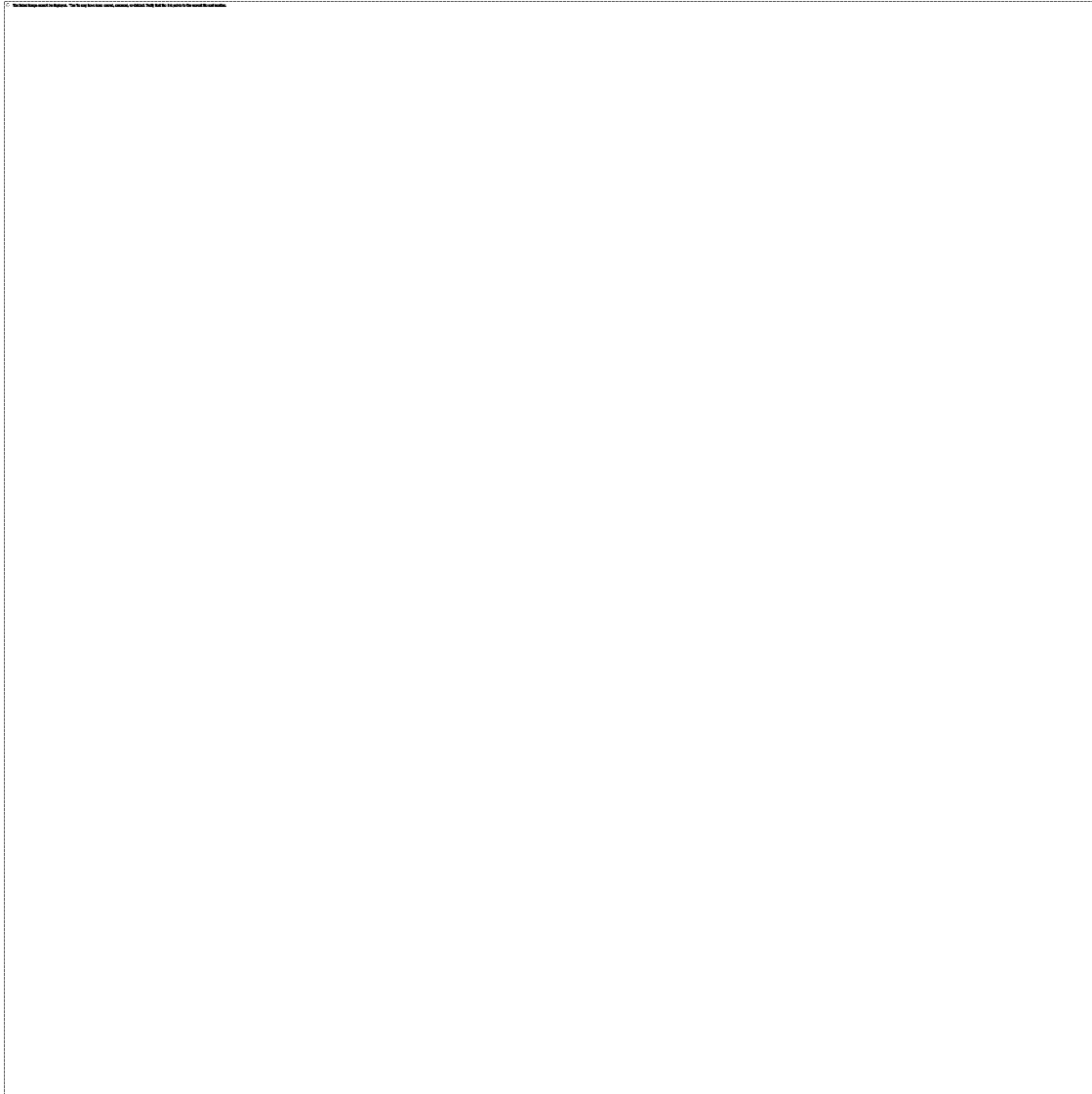


The Hill Gets It Wrong On New EPA FOIA Regulation

EPA has finalized a new regulation which will bring the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline.

The Hill used a false premise and ran a grossly inaccurate story explaining the new regulation. EPA has asked for a retraction.

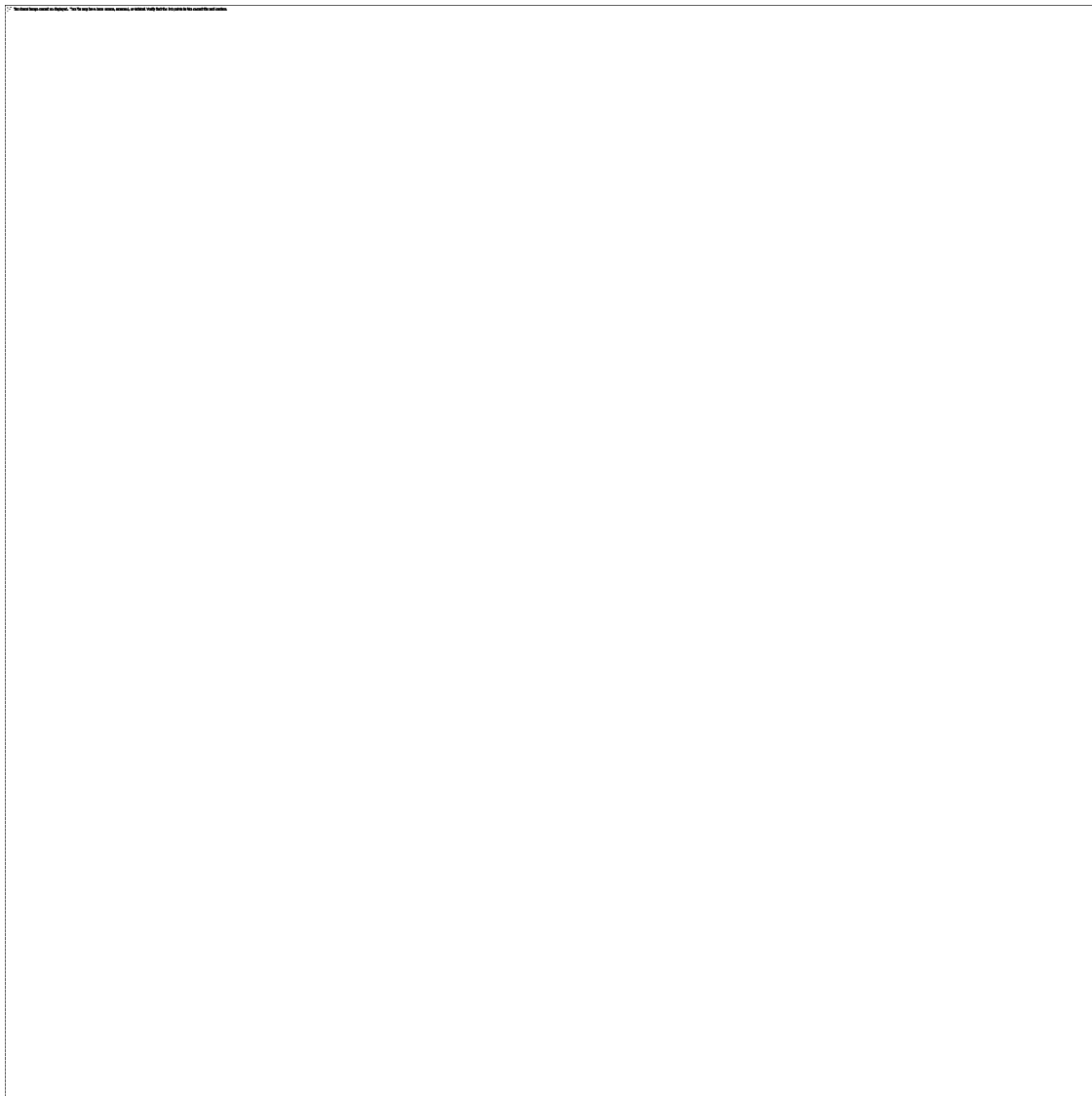
THE HILL'S FALSE HEADLINE



The headline above is false, EPA is not “expanding” political appointees powers to turn down FOIA requests.

What the Agency has done with this new rule is simply restated in a single place the political and career Agency officials who are authorized to issue determinations under the FOIA statute. The 2002 regulation was ambiguous in its description of who held this authority previously, and the 2019 regulation will provide clarity.

THE HILL'S FALSE QUOTES



The 2019 regulation does not grant any additional authorities such as the ability to “reject” FOIA requests by claiming “no records.” A response that yields “no records” is simply a request in which a search has been conducted and no responsive records are found, it is a frequent determination that has existed since the passage of the FOIA, and has been available to any official authorized to issue FOIA determinations. This new regulation brings EPA into compliance with the law, which the previous administration failed to do.

MORE OF THE HILL'S FALSE QUOTES

THIS IS NOT NEW.

At all federal departments and agencies this has been the case since the passage of FOIA, all of these options are available for every request that comes into the Agency.

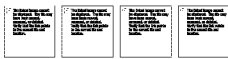
AND MORE FALSE REPORTING FROM THE HILL

THIS IS COMPLETELY FALSE.

EPA's regulations cannot change federal statute. When an Agency discovers responsive documents they are released, in accordance with the law. EPA will continue to interpret the FOIA regulations in accordance with the statute and the courts.

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Newsroom**





U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

[Unsubscribe](#)

Message

From: Miranda Green [mgreen@thehill.com]
Sent: 6/25/2019 1:20:46 PM
To: Abboud, Michael [abboud.michael@epa.gov]
Subject: Re: FW: Embargoed until you publish

Thanks, just saw the pre-federal notice published. The story is with editors at the moment.

On Tue, Jun 25, 2019 at 9:19 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=3a1ffcabdac3b04788a29bcf8c3da98c&node=40:1.0.1.1.2&rgn=div5>

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 8:53 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: FW: Embargoed until you publish

Hi Michael,

Finishing up on this, just wondering if you happen to have available a draft of the previous FOIA rule for EPA that I can link to?

Thanks,

On Mon, Jun 24, 2019 at 10:47 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

From: Abboud, Michael
Sent: Monday, June 24, 2019 10:40 AM
To: Miranda Green <mgreen@thehill.com>
Subject: Embargoed until you publish

Attached is the regulation Wheeler signed last week. And our statement which provides a clearer topline description of what is happening.

Michael Abboud

U.S. Environmental Protection Agency

Office of Public Affairs

M: Ex. 6 Personal Privacy (PP)

--

Miranda Green

Energy and Environment Reporter, The Hill

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mgreen@thehill.com

@mirandacgreen

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

mgreen@thehill.com

@mirandacgreen

Message

From: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Sent: 6/25/2019 12:59:41 PM
To: Abboud, Michael [abboud.michael@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: RE: Embargoed until you publish

I believe this is the previous regulation: <https://www.ecfr.gov/cgi-bin/text-idx?SID=3a1ffcabdac3b04788a29bcf8c3da98c&node=40:1.0.1.1.2&rgn=div5>

Joseph A. Brazauskas

Acting Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
(202) 564-5189

From: Abboud, Michael
Sent: Tuesday, June 25, 2019 8:58 AM
To: Epp, Timothy <Epp.Timothy@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Fwd: Embargoed until you publish

Was there a previous rule we had on foia?

Sent from my iPhone

Begin forwarded message:

From: Miranda Green <mgreen@thehill.com>
Date: June 25, 2019 at 8:52:35 AM EDT
To: "Abboud, Michael" <abboud.michael@epa.gov>
Subject: Re: FW: Embargoed until you publish

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M: Ex. 6 Personal Privacy (PP)

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Energy and Environment Reporter, The Hill
202-999-0660
mgreen@thehill.com
[@mirandacgreen](#)

Message

From: Abboud, Merriam [abboud.merriam@epa.gov]
Sent: 6/25/2019 2:18:48 PM
To: AO OPA Individual News Clips [AO_OPA_Ind_News_Clips@epa.gov]
Subject: The Hill: New EPA rule would expand Trump officials' powers to reject FOIA requests

The Hill

New EPA rule would expand Trump officials' powers to reject FOIA requests

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-expand-trump-officials-power-to-reject-foia-requests>

Miranda Green

Political appointees at the Environmental Protection Agency (EPA) will soon have the authority to reject public information requests without explanation.

The EPA's new Freedom of Information Act (FOIA) rule will expand the ability of the agency's administrator and other administration officials to withhold sought-after documents by labeling them "non-responsive," according to a copy of the final rule obtained by The Hill.

The rule is expected to be published in the Federal Register as early as Wednesday and will not allow for a public comment period.

According to the new language in the FOIA rule signed by EPA chief Andrew Wheeler last week, the administrator and other officials would be allowed to review all materials that fit a FOIA request criteria, known as responsive documents, and then decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses."

EPA officials who would be authorized to make that decision include the administrator, deputy administrators, assistant administrators, deputy assistant administrators, regional administrators, deputy regional administrators, general counsel, deputy general counsels, regional counsels, deputy regional counsels and the inspector general or delegates of those individuals, according to the final rule.

A "no records" response would allow records seekers to be told there are no documents meeting their search criteria, even if they were found but withheld by the political appointees.

The blanket explanation for non-responsive materials may also make it harder for groups or individuals to legally challenge any of EPA's decisions to withhold documents, because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld under a "no records" response.

"It's exceptionally difficult to litigate on the 'basis of responsiveness.' There is no record," said Kevin Bell, staff counsel at Public Employees for Environmental Responsibility.

"FOIA litigation is always pretty one-sided, there is no discovery...now they are just saying, 'Oh, it's not responsive. Oh, we don't have to tell you.'"

He added: "Discovery is almost never granted in those situations. Short of being an administrator or an EPA employee, there's no opportunity for oversight."

Bell equated EPA's new FOIA rule to a similar regulatory action unveiled earlier this year at the Interior Department, called an "awareness review," which allows political appointees 72 hours to review documents that mention them by name prior to release.

"It seems like EPA is doing about the same thing," he said. "On the 'basis of responsiveness' and 'no records responses' are both things that we've seen in the environmental FOIA community time and again," he said.

EPA officials characterize the rule change as a much-needed update to regulations as stipulated by 2007, 2009 and 2016 congressional updates to FOIA processing. The Obama administration failed to change its FOIA regulations as charged by Congress, and the new rule brings EPA into compliance.

"The changes in today's rule bring EPA's regulations into compliance with

non-discretionary provisions of the amended statute and reflect changes in the agency's organization, procedure, or practice," a senior career EPA official who helped devise the regulation told The Hill.

The official said the change to the "final determinations" authority in EPA's new rule largely combined two previous FOIA rules, and argued it wasn't a hefty change.

"This provision is not intended to be broader than the old regulations, which covered the subject in several provisions," the official said.

"The old regulations state that 'the head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other agency records when appropriate.' All positions listed in the updated regulations fall within the ordinary meaning of 'the head of an office, or that individual's designee.'" the official added.

While the EPA administrator and other political appointees have had the ability to grant or deny FOIA requests, doing so under the "basis of responsiveness" and "no response" option is a new addition in the forthcoming rule.

Other major changes in the rule include a decision to no longer allow EPA regional offices to handle initial FOIA requests. All requests instead must first be sent to the agency's National FOIA Office, which will then delegate the requests to the proper office.

Any requests sent first to regional offices by members of the press, the public or any organizations will not be redirected and won't be considered received.

"EPA expects to improve the efficiency and consistency of its intake and assignment processing, including more consistent and earlier outreach to requesters, through centralizing these functions into one office at the Agency," according to a statement provided by EPA on the rule change.

The agency official described the change as a way to align regional office FOIA responses with the national office.

"We took a look across the agency and saw there were different practices as to how they reached out to requesters in the first instance after a request has come in. We saw an opportunity to create greater uniformity. One of the practices we'll be adopting as this goes into effect is reaching out consistently to FOIA requesters with an initial letter," the official said.

Bell warned that the new order could allow EPA political appointees to better control the documents ultimately released by regional offices. He said regional offices often have less political pressure to withhold more responsive materials.

"This is just making sure that every FOIA request that gets reviewed gets taken down the hall or next door to Andrew Wheeler's office," Bell said. "Basically, anytime a FOIA request goes up to the administration you can extend however long it will take and reduce what you get back."

The EPA official argued the changes would neither speed up nor slow down the FOIA process. Under President Trump, the agency has experienced a huge uptick in FOIA requests and major backlog in processing, which has been exacerbated in some instances by a lack of funding to hire new staff to help with those requests.

"I don't think this will change the speed or response at all. We're trying to be consistent with outreach to requesters and not anticipating this will slow down our response," the senior official said. "Our aspiration is to come into compliance with the statute, in the most straight and most direct way possible, without coming into any discretionary changes with the statute."

The EPA has come under criticism for its handling of FOIA requests under Trump's presidency. Last fall, agency heads clashed with top Democratic lawmakers over an admittance by then acting EPA Administrator Wheeler's chief of staff to investigators with the House Oversight and Reform Committee that certain FOIA requests were put under more intense scrutiny because they were "politically charged."

Rep. Elijah Cummings (Md), who at the time was the panel's top Democrat and is now chairman, accused the EPA of impeding requests.

In a letter to lawmakers at the time, Kevin Minoli, the EPA's principal deputy general counsel, defended the EPA's decision to notify senior officials throughout the FOIA process regarding high-profile requests, what was being called at EPA an awareness review.

"This 'awareness review' process does not itself violate FOIA and can be completed without causing undue delay," Minoli said.

In another instance, former EPA staffers under previous administrator Scott Pruitt told congressional investigators in June 2018 that Pruitt had directed staff to finish completing FOIA requests submitted under former President Obama before starting on those requesting information from his tenure.

Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 6/25/2019 4:34:31 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]
Subject: Re: EPA to funnel all FOIA requests through legal office

Ex. 5 Deliberative Process (DP)

Sent from my iPad

On Jun 25, 2019, at 11:17 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Jackson, Ryan
Sent: Tuesday, June 25, 2019 11:50 AM
To: Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Fwd: EPA to funnel all FOIA requests through legal office

Ex. 5 Deliberative Process (DP)

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 Personal Privacy (PP)

Begin forwarded message:

From: "POLITICO Pro Energy Whiteboard" <politicoemail@politicopro.com>
Date: June 25, 2019 at 10:43:58 AM CDT
To: <jackson.ryan@epa.gov>
Subject: EPA to funnel all FOIA requests through legal office
Reply-To: "POLITICO subscriptions" <reply-fe941c7177660c7977-1159543_HTML-786581600-1376319-0@politicoemail.com>

By Alex Guillén

06/25/2019 11:42 AM EDT

EPA will consolidate all Freedom of Information Act requests into a central office in a move the agency says is meant to curb misdirected records requests.

In a final rule to be published in Wednesday's Federal Register, EPA makes a series of changes to its internal FOIA rules, which were last overhauled in 2002. Since then, Congress has passed three laws making significant changes to FOIA administration.

EPA says all FOIA requests will now be routed through its National FOIA Office in the Office of General Counsel. The public previously could choose to direct requests either to EPA headquarters or one of its ten regional offices. EPA said that having all requests clear through one office will "minimize the number of misdirected requests."

The rule also clarifies which officials have the "authority" to issue FOIA determinations, including to decide "whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue 'no records' responses." The list includes the administrator, deputy administrator, assistant administrators and their deputies and other specific top officials. EPA said the change "eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency."

The agency made several other minor tweaks, such as a clarification that a request must be submitted by 5 p.m. ET to be deemed received on that date.

EPA also said it will undertake a separate rulemaking with public comment for "certain discretionary and modernizing changes that the EPA is considering." It didn't further describe those potential changes.

To view online:

<https://subscriber.politicopro.com/energy/whiteboard/2019/06/epa-to-funnel-all-foia-requests-through-legal-office-3484168>

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<https://subscriber.politicopro.com/settings>

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This email was sent to jackson.ryan@epa.gov by: POLITICO, LLC 1000 Wilson Blvd.
Arlington, VA, 22209, USA

.....

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Message

From: Miranda Green [mgreen@thehill.com]
Sent: 6/25/2019 4:26:31 PM
To: Abboud, Michael [abboud.michael@epa.gov]
Subject: Re: requesting a retraction

Working on changes and adds, will send over a few things for further comment in a bit.

On Tue, Jun 25, 2019 at 11:33 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda, I continue to reiterate my call for you to retract your story. But here is our statement.

“The entire premise of your article is false the new regulation does not grant any additional authorities to “reject” FOIA requests by claiming “no records.” A response that yields “no records” is simply a request in which a search has been conducted and no responsive records are found, it is a frequent determination that has existed since the passage of the FOIA, and has been available to any official authorized to issue FOIA determinations. This new regulation brings EPA into compliance with the law, which the Obama administration ignored.” – **Michael Abboud EPA spokesman**

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 11:14 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: requesting a retraction

Can you provide a statement to us, reiterating what you said on the phone-- specifically saying that you don't intend to use "no response" authority in the way I described?

On Tue, Jun 25, 2019 at 11:03 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Thank you please give me an update as soon as possible.

Sent from my iPhone

On Jun 25, 2019, at 11:00 AM, Miranda Green <mgreen@thehill.com> wrote:

I got this Michael, I will be talking with my editor shortly and will get back to you.

On Tue, Jun 25, 2019 at 10:42 AM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda, please also flag for your editor, the premise of the your entire article is incorrect, and I would recommend retracting it. Your false description of a “no records” response as a denial of a FOIA request leads to inaccuracies throughout the whole piece. A “no records” response is inherently a “granting” of a FOIA request, in which a search was conducted and no records were discovered.

Your headline is inaccurate in how it describes the new regulation. EPA is not “expanding” political appointees powers to turn down FOIA requests. What we have done with this new rule is restated in a single place that political and career agency officials who are authorized to issue determinations under the FOIA statute. The 2002 regulation was ambiguous in its description of who held this authority previously.

The following statements are false, as you can tell from the extensive inaccuracies it would be better to retract and start over.

Political appointees at the Environmental Protection Agency (EPA) will soon have the authority to reject public information requests without explanation.

The EPA’s new Freedom of Information Act (FOIA) rule will expand the ability of the agency’s administrator and other administration officials to withhold sought-after documents by labeling them “non-responsive,” according to a copy of the final rule obtained by The Hill.

According to the new language in the FOIA rule signed by EPA chief Andrew Wheeler last week, the administrator and other officials would be allowed to review all materials that fit a FOIA request criteria, known as responsive documents, and then decide “whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue ‘no records’ responses.”

EPA officials who would be authorized to make that decision include the administrator, deputy administrators, assistant administrators, deputy assistant administrators, regional administrators, deputy regional administrators, general counsel, deputy general counsels, regional

counsels, deputy regional counsels and the inspector general or delegates of those individuals, according to the final rule.

A “no records” response would allow records seekers to be told there are no documents meeting their search criteria, even if they were found but withheld by the political appointees.

The blanket explanation for non-responsive materials may also make it harder for groups or individuals to legally challenge any of EPA’s decisions to withhold documents, because it will be more difficult to prove they were withheld unlawfully. A person appealing their FOIA response would not know if any documents were withheld under a “no records” response.

Bell equated EPA’s new FOIA rule to a similar regulatory action unveiled earlier this year at the Interior Department, called an “awareness review,” which allows political appointees 72 hours to review documents that mention them by name prior to release.

While the EPA administrator and other political appointees have had the ability to grant or deny FOIA requests, doing so under the “basis of responsiveness” and “no response” option is a new addition in the forthcoming rule.

Bell warned that the new order could allow EPA political appointees to better control the documents ultimately released by regional offices. He said regional offices often have less political pressure to withhold more responsive materials.

“This is just making sure that every FOIA request that gets reviewed gets taken down the hall or next door to Andrew Wheeler’s office,” Bell said. “Basically, anytime a FOIA request goes up to the administration you can extend however long it will take and reduce what you get back.”

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

mgreen@thehill.com

@mirandacgreen

--

Miranda Green

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mgreen@thehill.com

@mirandacgreen

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

mgreen@thehill.com

@mirandacgreen

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 8:21:40 PM
To: Konkus, John [konkus.john@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]
Subject: Re: **Ex. 5 Deliberative Process (DP)**

Thank you

Sent from my iPhone

On Jun 25, 2019, at 3:10 PM, Konkus, John <konkus.john@epa.gov> wrote:

After a long conversation with the editor, we got a formal correction and the article updated a second time: <https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

<image001.jpg>

From: Jackson, Ryan
Sent: Tuesday, June 25, 2019 2:22 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Subject: Re: **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:17 PM, Konkus, John <konkus.john@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Abboud, Michael
Sent: Tuesday, June 25, 2019 2:14 PM
To: Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; McFaul,

Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

Subject: **Ex. 5 Deliberative Process (DP)**

New:

<image001.png>

Old:

<image002.png>

Michael Abboud

U.S. Environmental Protection Agency

Office of Public Affairs

M: **Ex. 6 Personal Privacy (PP)**

CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 6/25/2019 8:14:03 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]
Subject: FW: EPA rule story

FYI...

From: Timothy R. Homan <thoman@thehill.com>
Sent: Tuesday, June 25, 2019 4:09 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA rule story

We have removed the second paragraph and issued a correction. The updated version is below.

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

Timothy R. Homan
News Editor
202-407-8000 (o)

Ex. 6 Personal Privacy (PP)
thoman@thehill.com
[@timothyrhoman](#)

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 6/25/2019 8:11:16 PM
To: Timothy R. Homan [thoman@thehill.com]
CC: Abboud, Michael [abboud.michael@epa.gov]
Subject: RE: EPA rule story

Thank you Tim.

From: Timothy R. Homan <thoman@thehill.com>
Sent: Tuesday, June 25, 2019 4:09 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>
Subject: EPA rule story

We have removed the second paragraph and issued a correction. The updated version is below.

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

Timothy R. Homan
News Editor
202-407-8000 (o)

Ex. 6 Personal Privacy (PP)

 (c)
thoman@thehill.com
[@timothyrhoman](#)

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 6/25/2019 6:28:00 PM
To: Miranda Green [mgreen@thehill.com]; Abboud, Michael [abboud.michael@epa.gov]
Subject: RE: Editor

The story is still wrong. We are still asking for a full retraction. We would still like to speak with your editor.

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 2:09 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: Re: Editor

Hi all,

Thank you for raising these concerns. I just got off the phone with my editor, who received your comments and just posted an update.

We have updated the story to reflect those and included clarifications throughout the story where needed. We also moved your response near the top of the story so that readers can be quickly informed of your position.

If you have additional corrections you think need to be addressed, please email the specifics to me.

Best,
Miranda

On Tue, Jun 25, 2019 at 1:42 PM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda we will need a call by 1:45.

From: Konkus, John
Sent: Tuesday, June 25, 2019 1:36 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Miranda Green <mgreen@thehill.com>
Subject: Re: Editor

Are they going to call?

John Konkus

Environmental Protection Agency

Deputy Associate Administrator for Public Affairs

Mobile: Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:18 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Just dial my number Ex. 6 Personal Privacy (PP)

Sent from my iPhone

On Jun 25, 2019, at 1:15 PM, Miranda Green <mgreen@thehill.com> wrote:

Hi John,

What's a good number for him to call you on?

On Tue, Jun 25, 2019 at 12:59 PM Konkus, John <konkus.john@epa.gov> wrote:

Miranda,

We need to talk with your editor ASAP, like in the next few mins.

John Konkus

Environmental Protection Agency

Deputy Associate Administrator for Public Affairs

Mobile: Ex. 6 Personal Privacy (PP)

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

mgreen@thehill.com

@mirandacgreen

--

Miranda Green
Energy and Environment Reporter, The Hill
202-999-0660
mgreen@thehill.com
[@mirandacgreen](#)

Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 6/25/2019 6:11:51 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Schiermeyer, Corry [schiermeyer.corry@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Konkus, John [konkus.john@epa.gov]
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Nice.

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:10 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

It's out.

Sent from my iPhone

On Jun 25, 2019, at 2:10 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Sent?

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 12:49 PM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:

Agree. Thank you

Sent from my iPhone

On Jun 25, 2019, at 12:44 PM, Abboud, Michael
<abboud.michael@epa.gov> wrote:

Corry one other addition,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: EPA Press Office <press@epa.gov>

Sent: Tuesday, June 25, 2019 1:44 PM

To: Abboud, Michael <abboud.michael@epa.gov>

Subject: The Hill Falsely Reports On EPA's New FOIA
Regulation - Preview

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 5:34:35 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: Re: draft

Ryan approved..

Ex. 5 Deliberative Process (DP)



U.S. ENVIRONMENTAL PROTECTION AGENCY

FACT CHECK

WWW.EPA.GOV/NEWSROOM

The Hill Gets It Wrong On New EPA FOIA Regulation

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
Sent: 6/25/2019 5:09:43 PM
To: Abboud, Michael [abboud.michael@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Konkus, John [konkus.john@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

please send this to me in text form in the body of an email, not in campaign monitor.

Ex. 5 Deliberative Process (DP)

From: Abboud, Michael
Sent: Tuesday, June 25, 2019 1:03:50 PM
To: Schiermeyer, Corry; Jackson, Ryan; Konkus, John; McFaul, Jessica; Beach, Christopher; Brazauskas, Joseph; Epp, Timothy
Subject: FW: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Ryan –

We want to push this out ASAP.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:02 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004





[Unsubscribe](#)

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 6/26/2019 9:56:33 PM
To: Abboud, Michael [abboud.michael@epa.gov]
CC: McFaul, Jessica [mcfaul.jessica@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]
Subject: Re: Asking for a correction to your recent EPA editorial

Ex. 5 Deliberative Process (DP)

On Jun 26, 2019, at 5:51 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

From: Tod Robberson <TRobberson@post-dispatch.com>
Date: June 26, 2019 at 5:46:30 PM EDT
To: "Abboud, Michael" <abboud.michael@epa.gov>
Subject: RE: Asking for a correction to your recent EPA editorial

I'll contact the editors at The Hill and let them speak for themselves about the nature of their changes.

Thanks.

Tod Robberson
Editorial Page Editor

<image001.png>

900 N. Tucker Blvd.
St. Louis, MO 63101
o. 314-340-8382 | c. **Ex. 6 Personal Privacy (PP)**
trobber@post-dispatch.com

From: Abboud, Michael [mailto:abboud.michael@epa.gov]
Sent: Wednesday, June 26, 2019 3:57 PM
To: Tod Robberson <TRobberson@post-dispatch.com>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: RE: Asking for a correction to your recent EPA editorial

Tod, your piece is still inaccurate. Including this part, all career and political employees at EPA and the entire federal government review their potentially responsive documents before they are released including during the equity period and the awareness review period. What you are highlighting below is not new. I can not stress to you enough that the information you are citing is not accurate and The Hill has had to issue a correction on this.

Under the new public-information rule Wheeler signed last week, he and other EPA political appointees will be allowed to review all documents and other materials under consideration for release, The Hill reported. Those officials will receive effective veto power over the documents' release without having to provide a detailed reason for the denial.

I'd also like to point out that you omitted the fact that The Hill **CORRECTED** their story in your "update." If you cared about providing more information as you highlighted in your editorial this seems to be a critical mistake.

UPDATE: Since this editorial first published, The Hill updated its story to include a response from EPA disputing the interpretation of new authorities reportedly granted to appointees.

Call if you have any more questions.

Michael Abboud

U.S. Environmental Protection Agency
Office of Public Affairs

M: Ex. 6 Personal Privacy (PP)

From: Tod Robberson <TRobberson@post-dispatch.com>
Sent: Wednesday, June 26, 2019 4:40 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Asking for a correction to your recent EPA editorial

I've reviewed the new rule in its entirety as well as the changes to the article posted by The Hill. I've inserted an update to our editorial online containing your denial statement to The Hill. But I see no reason to retract our editorial or make other alterations. The pertinent language in the new rule, quoted below, continues to be the basis of the concerns outlined in our editorial (as well as the concerns of the analysts quoted in The Hill's updated story):

(b) Authority to issue final determinations. The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses.

Tod Robberson
Editorial Page Editor

<image006.png>

900 N. Tucker Blvd.
St. Louis, MO 63101
o. 314-340-8382 | c: Ex. 6 Personal Privacy (PP)

From: Abboud, Michael [mailto:abboud.michael@epa.gov]
Sent: Wednesday, June 26, 2019 9:47 AM
To: Tod Robberson <TRobberson@post-dispatch.com>; Kevin McDermott <KMcDermott@post-dispatch.com>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Konkus, John <konkus.john@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: Asking for a correction to your recent EPA editorial

Tod and Kevin,

Want to request you correct or retract your recent editorial as it is based off bad information, which has since been corrected by The Hill. The Hill's new headline and correction are below as well as the link to their corrected article. Highly recommend you read the new story of which much was changed and considering editing or taking down your editorial to avoid the further spread of false information. Call me back if you have questions, 202-578-9013. Also here is the link to the new rule,

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-13290.pdf>

<https://thehill.com/policy/energy-environment/450169-new-epa-rule-would-allow-more-administration-officials-to-weigh-in-on-foia-requests>

CORRECTION:

<image007.png>

OLD HEADLINE:

<image008.png>

NEW HEADLINE:

<image009.png>

Michael Abboud
U.S. Environmental Protection Agency
Office of Public Affairs
M: Ex. 6 Personal Privacy (PP)

CORRECTION: A previous version of this story mischaracterized the scope of the new rule and misstated some of the authorities that come with it.

New EPA rule would expand Trump officials' powers to reject FOIA requests

BY MIRANDA GREEN - 06/25/19 09:50 AM EDT

 156 COMMENTS

New EPA rule could expand number of Trump officials weighing in on FOIA requests

BY MIRANDA GREEN - 06/25/19 09:50 AM EDT

 191 COMMENT

Message

From: Kaufman, Ellie [Ellie.Kaufman@turner.com]
Sent: 6/26/2019 8:06:47 PM
To: Abboud, Michael [abboud.michael@epa.gov]
Subject: RE: CNN: EPA changes transparency rules

Hey Michael,

I see you called me. I wasn't ignoring you – I didn't get into work until just now because I am working the debates tonight. If you ever can't reach me on that 917 number, call me at Ex. 6 Personal Privacy (PP) that's my personal cell. Sometimes I am negligent about checking my work cell when I'm not at work.

Are you all good? Any other questions?

Thanks,
Ellie

From: Abboud, Michael <abboud.michael@epa.gov>
Sent: Wednesday, June 26, 2019 12:47 PM
To: Wallace, Gregory <gregory.wallace@turner.com>
Cc: Kaufman, Ellie <Ellie.Kaufman@turner.com>; Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: Re: CNN: EPA changes transparency rules

Keep publishing those apples man.

Sent from my iPhone

On Jun 26, 2019, at 12:46 PM, Wallace, Gregory <gregory.wallace@turner.com> wrote:

Not that I'm aware of, Michael. I still appreciate you sharing the points.

Thank you,
Greg

From: Abboud, Michael <abboud.michael@epa.gov>
Sent: Wednesday, June 26, 2019 11:58 AM
To: Wallace, Gregory; Kaufman, Ellie
Cc: Konkus, John; Schiermeyer, Corry; McFaul, Jessica
Subject: RE: CNN: EPA changes transparency rules

Any update on this?

From: Abboud, Michael
Sent: Wednesday, June 26, 2019 9:55 AM
To: Wallace, Gregory <gregory.wallace@turner.com>; Kaufman, Ellie <Ellie.Kaufman@turner.com>

Cc: Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: RE: CNN: EPA changes transparency rules

That is not clear at all from your article. You made it sound like this is brand new when this has been happening since the creation of FOIA, everyone has been able to review their documents before they are sent out its common practice. Your article states that this is new when it is not, that is false. If you want to say that the new rule that "the Administrator has now been enumerated in the list of positions with determination authority" say that then, don't make this wild leap in logic to get to the conclusion you have.

Secondly, that is an outrageous assessment to tag "according to congressional democrats" at the end of the sentence. If you want to stick to what you have there I'm asking you move those four words to the front of the sentence. To leave it as is misleading and lends itself to be used by critics without the full context.

From: Wallace, Gregory <gregory.wallace@turner.com>
Sent: Wednesday, June 26, 2019 9:47 AM
To: Abboud, Michael <abboud.michael@epa.gov>; Kaufman, Ellie <Ellie.Kaufman@turner.com>
Cc: Konkus, John <konkus.john@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>
Subject: Re: CNN: EPA changes transparency rules

Hi, Michael,

Thanks for letting us know your concerns.

I understand your point about the awareness review. We're noting that the Administrator has now been enumerated in the list of positions with determination authority. The prior version listed the deputy administrator and several lower positions, but not the administrator.

The sentence you highlighted in green does already attribute that characterization of Mr. Jackson's closed-door testimony to congressional democrats.

Thank you,

Greg

From: Abboud, Michael <abboud.michael@epa.gov>
Sent: Wednesday, June 26, 2019 9:34 AM
To: Wallace, Gregory; Kaufman, Ellie
Cc: Konkus, John; Schiermeyer, Corry; McFaul, Jessica
Subject: FW: CNN: EPA changes transparency rules

A couple issues with your article below.

First the Administrator and all staff at the Agency have always been able to review their documents before they are released, this is not new to this administration and not new in this rule. The awareness review process allows all EPA staffers to review their responsive records before they are released and this is in line with the previous administration's practices as well. Career staffers are still the ones handling the FOIA and compiling the responsive records.

I'm asking you to change the green highlighted sentence as it is a misleading characterization of what actually happened last year. Nowhere in the article you linked to does it say anything remotely close to that. If you want to say that Congressional Democrats accuse the Agency of "slow-walking" that is fine, but Jackson never said anything of the sort.

From: Kazempoor, Kelly
Sent: Wednesday, June 26, 2019 9:17 AM
To: AO OPA Individual News Clips <AO_OPA_Ind_News_Clips@epa.gov>
Subject: CNN: EPA changes transparency rules

CNN

EPA changes transparency rules

<https://www.cnn.com/2019/06/26/politics/epa-foia-rule/>

By Gregory Wallace and Ellie Kaufman

The Environmental Protection Agency is making changes to its transparency rules that include explicitly granting the administrator the authority to decide which public records the agency will release or withhold.

The change in the Freedom of Information Act rule comes without the normal process of public input. It was not announced but instead was placed in the Federal Register for formal publication.

The rule change appears to allow, for example, the administrator to personally review his own documents, such as emails and calendars, and decide what to release and what to withhold, though he still must comply with the applicable laws governing the release of public documents. At federal agencies, that process is typically in the hands of career employees and attorneys.

The EPA says it has fielded an unprecedented level of requests under the Trump administration, and some of its disclosures under FOIA have resulted in embarrassing revelations about agency leadership and actions.

Political appointees at the Trump administration EPA have taken a keen interest in the handling of FOIA requests, even acknowledging instances where the process was tinged with political influence. Chief of staff Ryan Jackson testified last summer that he and aides would slow-walk "politically charged" requests, according to congressional Democrats.

The rule change adds the administrator to the enumerated list of political appointees who can personally review requests and make "final determinations," the decisions about which records fall within the scope of the request and how to redact those documents.

Administrator Andrew Wheeler came into office last summer placing a "premium on transparency," his spokesman said. His predecessor Scott Pruitt had kept "secret" calendars concealing his controversial meetings from public documents, a whistleblower revealed.

The rule change also centralizes the records process, blocking the EPA's network of regional offices from accepting FOIA requests, as is currently done. Those requests will not be considered "received by the Agency," the rule states.

The rule was also posted without a period for public comment, a normal procedure in the creation of federal regulations. The EPA said it was justified in doing so because the revisions "do not change the substantive standards" it uses and it cited a federal law that exempts changes to internal agency procedures from public comment periods.

The agency said in a statement that the changes "will bring the Agency into compliance with the Congressional amendments" to the original Freedom of Information Act law. "Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline," the statement said.

American Oversight, a left-leaning watchdog group that has repeatedly taken the Trump administration to court over slow responses to public records requests, said in a statement, "Giving appointees a political veto over transparency is a recipe for obstruction and deceit."

"Nothing the EPA has done under this administration suggests its top leadership should be trusted to serve as intermediaries of the truth," executive director Austin Evers said in the statement. "Public records belong to the public, not the government, and one of the strengths of the Freedom of Information Act is that it lets nonpartisan experts release information based on the law, not politics."

The Sierra Club, which obtained tens of thousands of pages of internal EPA records through the Freedom of Information Act, said the revelations "may never have come to light with this change."

"The only good news about this rule is that it is obviously and in-your-face illegal, and we will fight it tooth and nail," said Pat Gallagher, of the group's environmental law program.

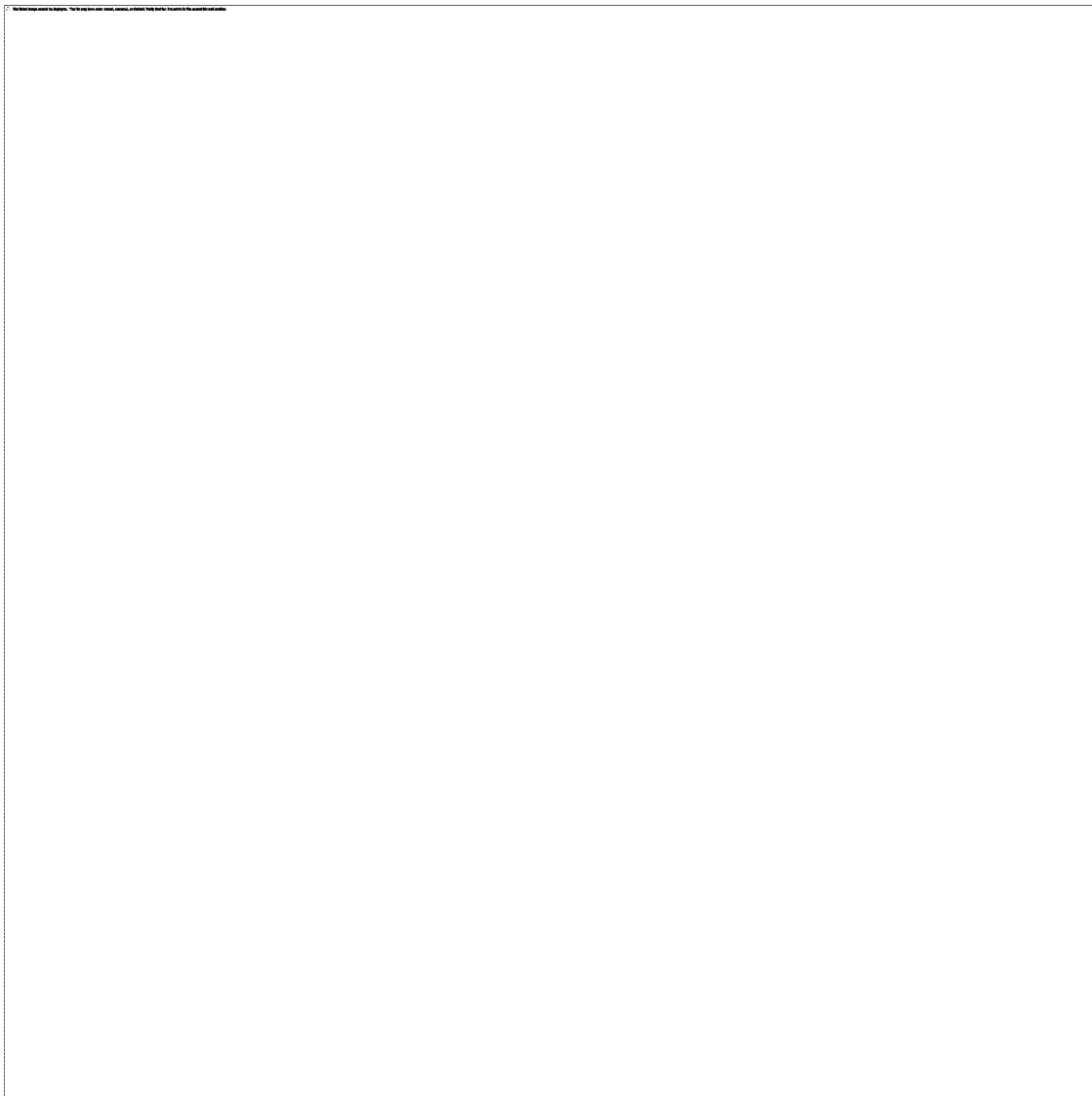
The Interior Department has also expanded political reviews of FOIA requests, including silently establishing an additional layer of review by political appointees and proposing limits on the number of requests a person or group can make. The Interior Department disputes that it has a secret review process and says its proposed changes are in the name of efficiency.

Message

From: Hackel, Angela [Hackel.Angela@epa.gov]
Sent: 6/25/2019 7:30:56 PM
To: Press [Press@epa.gov]; Regional Public Affairs Directors [Regional_Public_Affairs_Directors@epa.gov]; AO-OCIR Everyone [AOOCIR_Everyone@epa.gov]; AO OPA Internal Communications [AO_OPA_Internal_Communications@epa.gov]; AO OPA Immediate Office [AO_OPA_Immediate_Office@epa.gov]; AO OPA Web Communications [AO_OPA_Web_Communications@epa.gov]; Comm Directors and Alternates [Comm_Directors_and_Alternates@epa.gov]
Subject: Newsroom: The Hill Falsely Reports On EPA's New FOIA Regulation

In the newsroom: <https://www.epa.gov/newsreleases/hill-gets-it-wrong-new-epa-foia-regulation>

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:51 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation

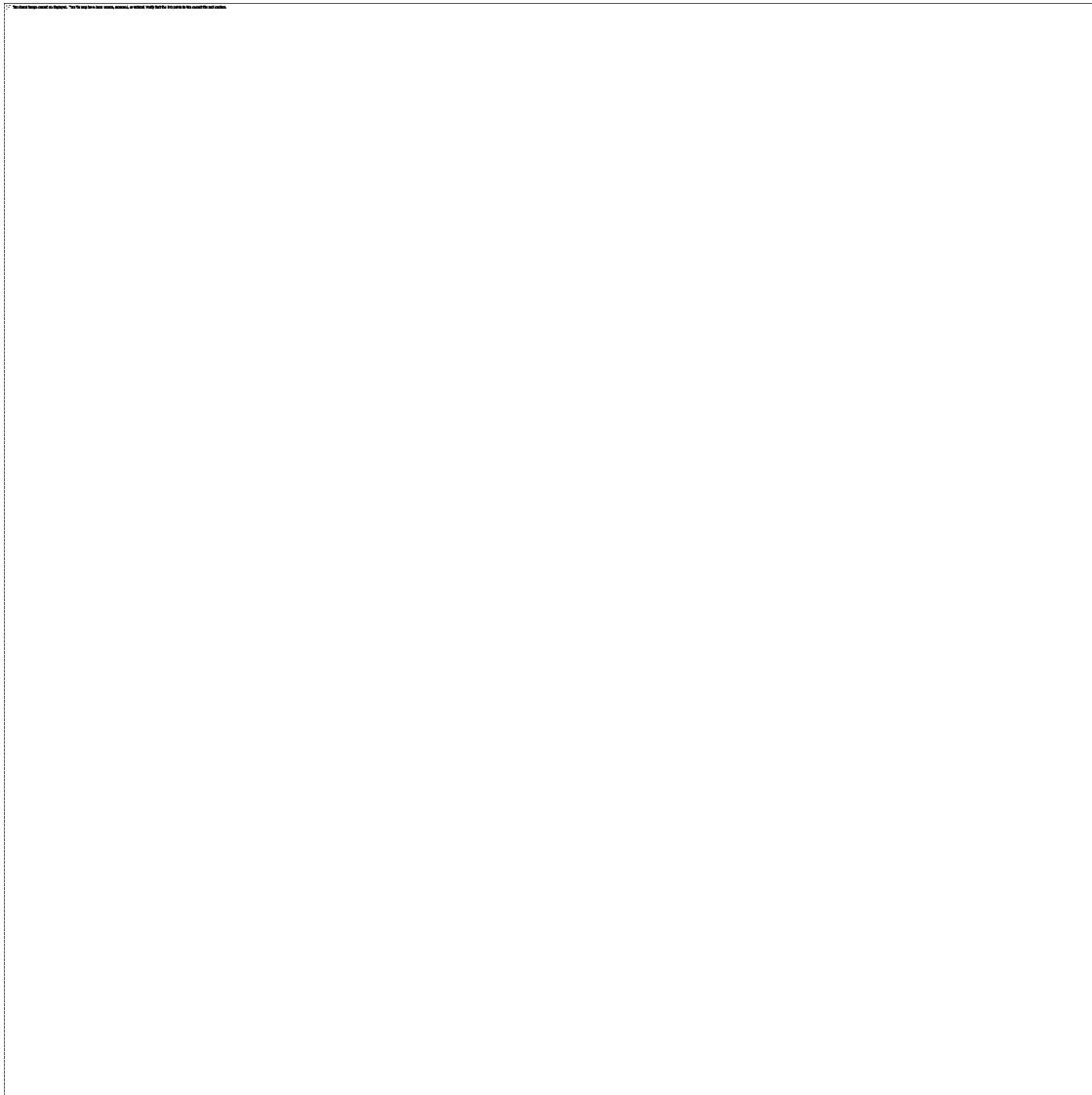


***The Hill* Gets It Wrong On New EPA FOIA Regulation**

EPA has finalized a new regulation which will bring the Agency into compliance with the Congressional amendments to FOIA from 2007, 2009, and 2016. Congress provided all federal departments and agencies until the end of 2016 to update their FOIA regulations, the Obama administration failed to meet this deadline.

The Hill used a false premise and ran a grossly inaccurate story explaining the new regulation. EPA has asked for a retraction.

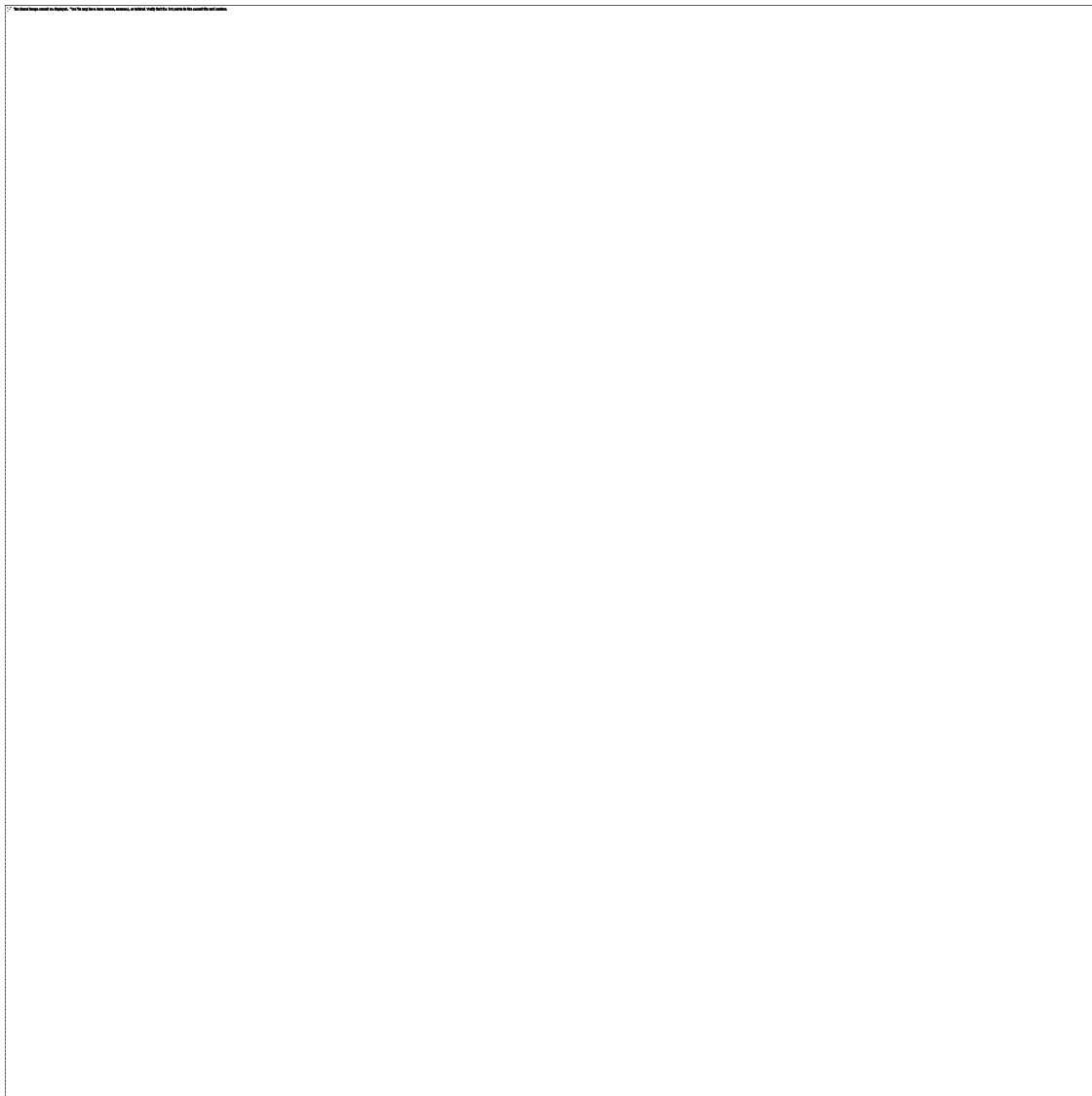
THE HILL'S FALSE HEADLINE



The headline above is false, EPA is not “expanding” political appointees powers to turn down FOIA requests.

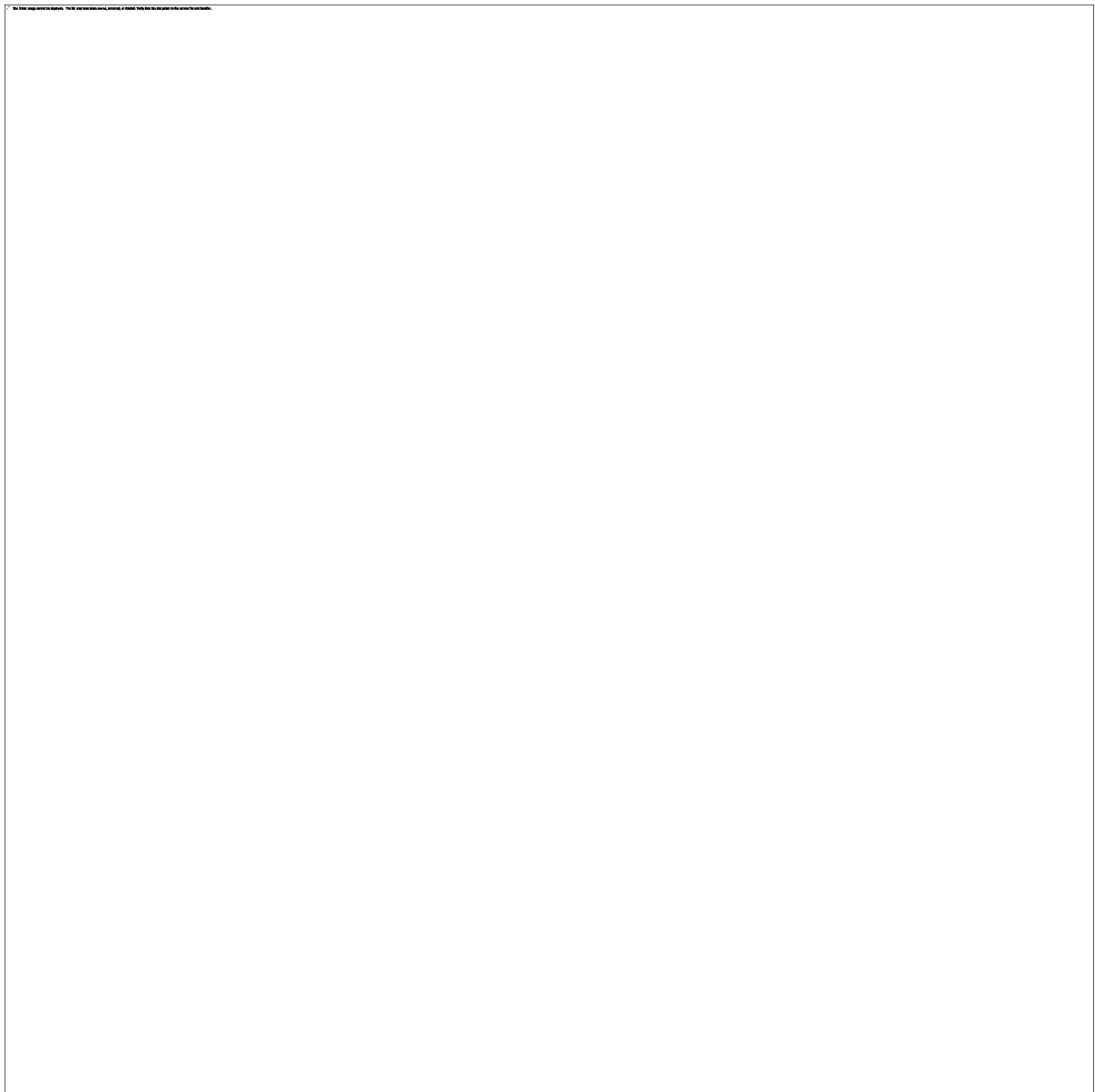
What the Agency has done with this new rule is simply restated in a single place the political and career Agency officials who are authorized to issue determinations under the FOIA statute. The 2002 regulation was ambiguous in its description of who held this authority previously, and the 2019 regulation will provide clarity.

THE HILL'S FALSE QUOTES



The 2019 regulation does not grant any additional authorities such as the ability to “reject” FOIA requests by claiming “no records.” A response that yields “no records” is simply a request in which a search has been conducted and no responsive records are found, it is a frequent determination that has existed since the passage of the FOIA, and has been available to any official authorized to issue FOIA determinations. This new regulation brings EPA into compliance with the law, which the previous administration failed to do.

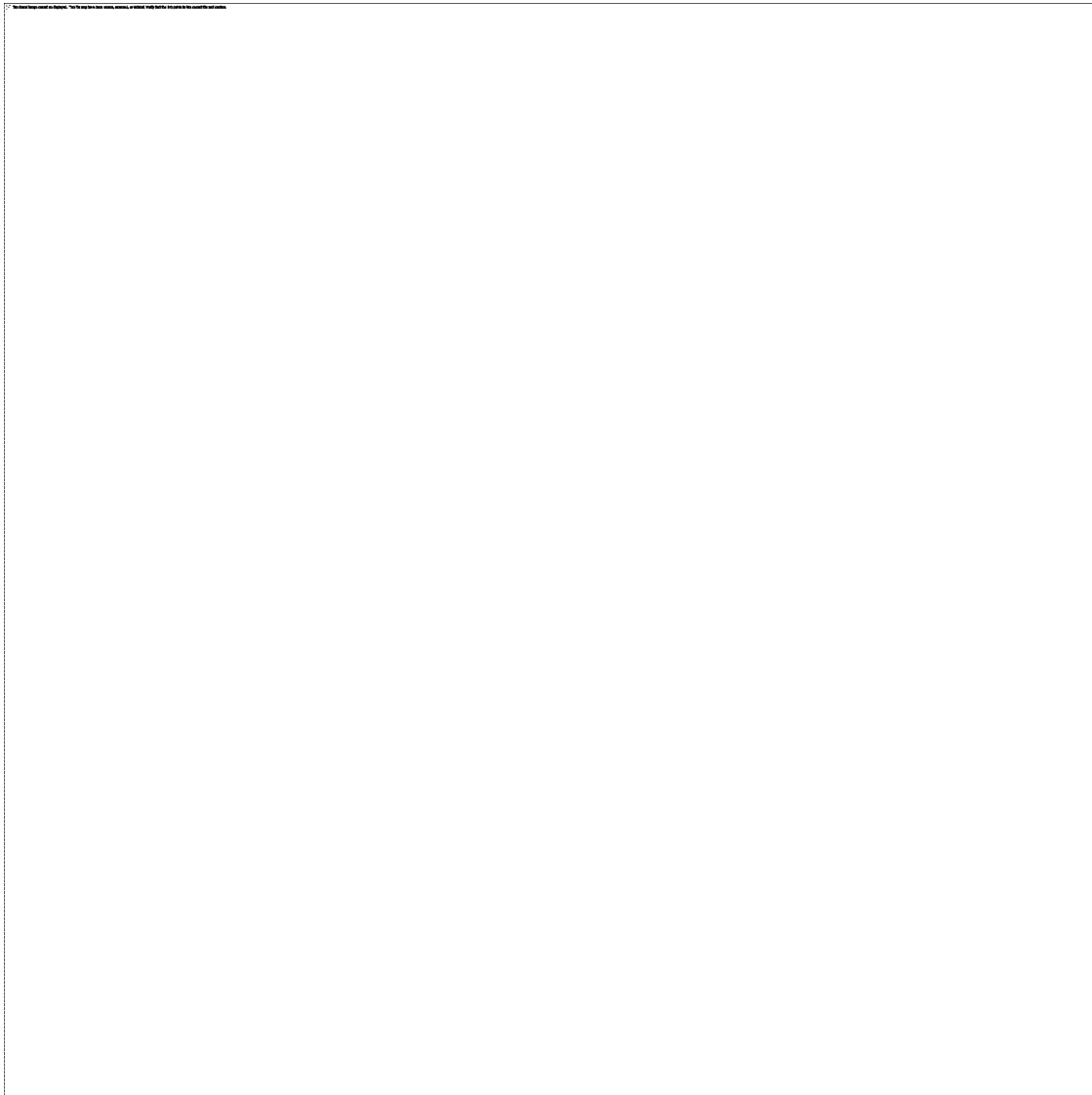
MORE OF THE HILL'S FALSE QUOTES



THIS IS NOT NEW.

At all federal departments and agencies this has been the case since the passage of FOIA, all of these options are available for every request that comes into the Agency.

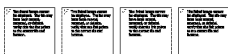
AND MORE FALSE REPORTING FROM THE HILL



THIS IS COMPLETELY FALSE.

EPA's regulations cannot change federal statute. When an Agency discovers responsive documents they are released, in accordance with the law. EPA will continue to interpret the FOIA regulations in accordance with the statute and the courts.

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Newsroom**



U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004



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Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 6/25/2019 5:28:58 PM
To: Schiermeyer, Corry [schiermeyer.corry@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: RE: draft

Ex. 5 Deliberative Process (DP)

From: Schiermeyer, Corry
Sent: Tuesday, June 25, 2019 1:22 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Subject: Re: draft

with edits...now for Ryan's input.



U.S. ENVIRONMENTAL PROTECTION AGENCY

FACT CHECK

WWW.EPA.GOV/NEWSROOM

The Hill Gets It Wrong On New EPA FOIA Regulation

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

Sent: 6/25/2019 6:13:44 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]
Subject: RE: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Following our press release The Hill changed the story and the headline.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Jackson, Ryan
Sent: Tuesday, June 25, 2019 2:10 PM
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Re: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Sent?

Ryan Jackson
Chief of Staff
U.S. EPA

Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 12:49 PM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:

Agree. Thank you

Sent from my iPhone

On Jun 25, 2019, at 12:44 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Corry one other addition, we want to include that have asked for a retraction.

From: EPA Press Office <press@epa.gov>
Sent: Tuesday, June 25, 2019 1:44 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: The Hill Falsely Reports On EPA's New FOIA Regulation - Preview

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Miranda Green [mgreen@thehill.com]
Sent: 6/25/2019 6:33:18 PM
To: Konkus, John [konkus.john@epa.gov]
Subject: Re: Editor

Alright he said you can call him here: Ex. 6 Personal Privacy (PP)

His name is Tim Homan

On Tue, Jun 25, 2019 at 2:28 PM Konkus, John <konkus.john@epa.gov> wrote:

The story is still wrong. We are still asking for a full retraction. We would still like to speak with your editor.

From: Miranda Green <mgreen@thehill.com>
Sent: Tuesday, June 25, 2019 2:09 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>
Subject: Re: Editor

Hi all,

Thank you for raising these concerns. I just got off the phone with my editor, who received your comments and just posted an update.

We have updated the story to reflect those and included clarifications throughout the story where needed. We also moved your response near the top of the story so that readers can be quickly informed of your position.

If you have additional corrections you think need to be addressed, please email the specifics to me.

Best,
Miranda

On Tue, Jun 25, 2019 at 1:42 PM Abboud, Michael <abboud.michael@epa.gov> wrote:

Miranda we will need a call by 1:45.

From: Konkus, John
Sent: Tuesday, June 25, 2019 1:36 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Miranda Green <mgreen@thehill.com>
Subject: Re: Editor

Are they going to call?

John Konkus

Environmental Protection Agency

Deputy Associate Administrator for Public Affairs

Mobile: Ex. 6 Personal Privacy (PP)

On Jun 25, 2019, at 1:18 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Just dial my numbe Ex. 6 Personal Privacy (PP)

Sent from my iPhone

On Jun 25, 2019, at 1:15 PM, Miranda Green <mgreen@thehill.com> wrote:

Hi John,

What's a good number for him to call you on?

On Tue, Jun 25, 2019 at 12:59 PM Konkus, John <konkus.john@epa.gov> wrote:

Miranda,

We need to talk with your editor ASAP, like in the next few mins.

John Konkus

Environmental Protection Agency

Deputy Associate Administrator for Public Affairs

Mobile: Ex. 6 Personal Privacy (PP)

--

Miranda Green

Energy and Environment Reporter, The Hill

202-999-0660

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